

REMARKS

Claims 1-10 and 13-18 are pending in the application, claim 11, 12, and 19-24 have been withdrawn from consideration and are cancelled without prejudice or disclaimer of the subject matter recited therein. Claims 1, 13, and 16 are independent claims.

The Examiner disagreed with Applicant's identification of claims 1-10 and 13-18 being readable on the elected first species shown in Figures 1-5 and requested response regarding the election/restriction requirement. It is submitted that independent claims 1 and 13 each recite members as illustrated in Figures 1-5. Accordingly, they are readable on the elected species. Further, independent claim 16 recites a mask and a mouthpiece member as illustrated in Figures 3-5. As such, they are readable on the elected species. As noted above, claims 11, 12, and 19-24 have been cancelled without prejudice or disclaimer of the subject matter recited therein.

Claims 1-10 and 13-15 are rejected under 35 U.S.C. 102 as being anticipated by Milligan (U.S. Patent No. 5,206,955). Milligan discloses a protective face guard (20) comprised of a mask piece (22), a mouthguard (64) having at one end a teeth guard (66) connected by extension (67) to plate (68), stem (70) (Figure 6) extends from plate (68) and tapers at its distal end to terminate with a knob (72) (Figure 7).

Claim 1 is amended to recite "a generally rigid fixation member coupled to the member, and a distinct fastener plate". Claim 13 is amended to recite a generally rigid plate and at least one fastener extending away from the plate, and a distinct fastener plate". Support for the amendments is found in the application as filed and specifically at page 4 lines 19-22 and Figure 1. No new matter is added by virtue of the amendments to the claims.

It is submitted that Milligan fails to disclose or suggest an apparatus comprising a generally rigid fixation member coupled to the member, let alone an apparatus having a distinct fastener plate, as recited by amended claim 1. Contrary to being rigid, the mouthguard (64) of Milligan is taught as being formed, for example, by a "rubber-like" material. See, Column 6 line 21. Since the mouth guard is an integrally formed structure (column 6 line 29), it is noted that the plate (68) would also be "rubber-like". Milligan goes further to teach that the plate (68) is formed to cushion the player's mouth and teeth areas upon the occurrence of impact or collision with the face guard. See, column 6 lines 35-37. Still further, Milligan teaches that the stem (70) and knob (72) are constructed from a malleable material so that the knob

(72) can be inserted through channel (56) and mask opening (62), which both have a smaller diameters than the diameter of knob (72).

In addition, the Examiner's attention is directed to Figure 4, of Milligan, which shows the mouthgard 64 to be a one-piece structure. There is simply no description or suggestion of the mouthgard 64 having any separate features, let alone a distinct fastener plate formed to couple the mask to the fixation member so that the member is in a fixed position relative to the mask, as recited by amended claim 1.

Therefore, it is submitted that Milligan fails to disclose or suggest an apparatus comprising "a member formed to be positioned adjacent to a cranio facial bone of the patient, a generally rigid fixation member coupled to the member, and a distinct fastener plate formed to couple the mask to the fixation member so that the member is in a fixed position relative to the mask", as recited by amended claim 1.


It is further submitted that Milligan fails to disclose or suggest an apparatus comprising "a mouthpiece member, a fixation member coupled to the mouthpiece member, the fixation member including a generally rigid plate and at least one fastener extending away from the plate, and a distinct fastener plate formed for attachment with the at least one fastener so that the mask is coupled between the plate and the fastener plate", as required by amended claim 13.

Accordingly, claims 1 and 13 as amended are not anticipated and are believed to be patentable over Milligan. Claims 2-10 depend from amended claim 1 and claims 14-15 depend from amended claim 13. Reconsideration leading to withdrawal of the rejection is respectfully requested.

The claims are believed to be in condition for allowance, and allowance of the application is respectfully requested. It is requested if necessary, that this paper be considered a Petition for Extension of time sufficient to effect a timely response.

Respectfully submitted,

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